



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/167899

PRELIMINARY RECITALS

Pursuant to a petition filed August 10, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 22, 2016, at Milwaukee, Wisconsin. The hearing was rescheduled 7 times prior to the March 22 date, all at petitioner's or his attorney's requests. The matter was held open post-hearing 24 days to allow time for the parties' attorneys to submit closing arguments after a lengthy hearing involving 42 exhibits.

The issue for determination is whether the agency has established FS overpayments against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Atty. [REDACTED]
Winnebago County Corporation Counsel
448 Algoma Blvd.
PO Box 2808
Oshkosh WI 54903-2808

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner received FS from June 2011-May 2014, with small breaks in service therein.
3. When petitioner applied for FS in June 2011, the agency used the Self Employment Income Report Form (SEIRF) provided by the petitioner to determine his income, and FS opened. The agency continued to use the SEIRFs provided by the petitioner thereafter to determine income and FS allotments. This process changed in December 2013 when the agency worker questioned petitioner's SEIRF showing greater expenses than income. At that time the agency worker requested petitioner's taxes. Petitioner was only able to provide 2012 taxes, and therefore for 2014, the agency used his 2012 taxes to determine income and FS allotments.
4. In December 2013 the agency worker also requested petitioner's taxes from 2008-2012 to review for possible overpayment of FS.
5. By February 2015, the agency referred the matter to [REDACTED] for an investigation into petitioner's case. The investigation confirmed numerous businesses owned by petitioner, some of which were successful, some that were sold, and some unsuccessful. Because of the unpredictability of those various ventures, the investigator determined that using petitioner's federal tax forms would be the best way of determining his income for the period in which he received FS.
6. On June 15, 2015 the agency issued FoodShare Overpayment Notices to petitioner advising he and his wife that they had an FS overpayment from June 3, 2011- May 31, 2012 in the amount of \$6387, an FS overpayment from June 1, 2012-May 31, 2013 in the amount of \$8016, and an FS overpayment from June 8, 2013-May 31, 2014 in the amount of \$4290, all due to failure to report accurate self-employment income (Exhibit 41).

DISCUSSION

The agency is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal regulations concerning FS overpayments require the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation ("IPV"), an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b).

The issue for determination here is whether the agency correctly concluded that petitioner was overissued FS. FS overpayments are calculated by determining the correct amount of food stamp benefits, if any, the household was entitled to receive, and establishing a claim for the difference between the allotment the household received and the allotment the household should have received. 7 C.F.R. §273.18(c)(1).

For at least the past 25 years, the agency has issued, adopted and/or approved, fair hearing decisions on FS overpayments allowing the use of the best evidence available of household income. In this case, the best evidence available is petitioner's tax returns, and is what the agency used to determine petitioner's income for the overpayments. See *FS Handbook* §§4.3.3.5 and 4.3.3.5.3. Because, the agency argues, petitioner's income during the timeframes in question was over 200% FPL, all of the FS issued to him during that time should be recoverable. See *FS Handbook* §4.2.1.1. The petitioner did not dispute the calculations. However, I note that the FS overpayment worksheets do not set forth the calculations in their entirety. They simply state what the agency had allotted for him, and find that all as an overpayment. The only income calculations presented at hearing were for his BadgerCare overpayment (addressed in companion case MOP/167901). See Exhibit 21. These show petitioner's various business and their various incomes, or in some cases, losses. They also set forth depreciation and FPLs. All of them in the

respective timeframes for these FS overpayment claims show him above the 200% FPL, until January 2014 and thereafter. Without the evidence on which to base a correct overpayment, the overpayment determination must be rescinded for the January – May 2014 period.

The preponderance of the evidence supports FS overpayments from June 3, 2011- May 31, 2012 in the amount of \$6387, from June 1, 2012-May 31, 2013 in the amount of \$8016, and an FS overpayment from June 8, 2013-December 31, 2013 in the amount of \$3830. The case is remanded only in part to rescind the \$460 in FS overpayment from the January – May 2014 period.

CONCLUSIONS OF LAW

1. The agency has met its burden to establish that it correctly calculated overpayments of FS against the petitioner from June 3, 2011- May 31, 2012 in the amount of \$6387 (claim # [REDACTED]), and from June 1, 2012-May 31, 2013 in the amount of \$8016 (claim # [REDACTED]).
2. The agency has met its burden to establish that it correctly calculated overpayments of FS against the petitioner from June 8, 2013-December 31, 2013 in the amount of \$3830 (claim # [REDACTED]).
3. The agency has not met its burden to establish that it correctly calculated overpayments of FS against the petitioner from January – May 2014 in the amount of \$460 (claim # [REDACTED]).

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to rescind overpayments of FS against the petitioner from January – May 2014 in the amount of \$460 (from claim # [REDACTED]) and to cease all collection or recovery activities based upon that portion of the claim, had such collections begun. These actions shall be completed within 10 days of the date of this Decision. In all other respects, the petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

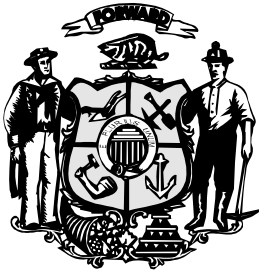
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of April, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 22, 2016.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney [REDACTED]